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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CATHY DENISE EASTRIDGE, Defendant and Appellant.	E068916 (Super.Ct.No. RIF1500929) OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge. Affirmed.

Forest M. Wilkerson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Lise S. Jacobson and Robin Urbanski, Deputy Attorneys General, for Plaintiff and Respondent.

Cathy Eastridge appeals her convictions for possession of methamphetamine for the purpose of sale (Health & Saf. Code, § 11378), being a felon in possession of a firearm (Pen. Code, § 29800) and being a felon in possession of ammunition (Pen. Code, § 30305, subd. (a)).

Eastridge argues we should reverse her convictions for several reasons. First, she says the trial court erred by admitting a stipulation informing the jury of her prior conviction for possession of methamphetamine for the purpose of sale. Second, she says the prosecuting attorney committed multiple instances of prosecutorial misconduct which prejudiced her case individually and collectively. She says it's reasonably likely the jury construed or applied the prosecutor's remarks in an objectionable fashion. Third, she asks us to conduct an independent review of the sealed portion of the search warrant which authorized the search of her residence and led to her arrest. She asks us to determine whether the trial court should have disclosed information about a confidential informant.

We conclude admitting the stipulation about the prior conviction was proper to show intent and knowledge under Evidence Code section 1101, subd. (b), the prosecutor did not commit misconduct, and the trial court did not abuse its discretion by refusing to disclose information obtained from the confidential informant. We therefore affirm the judgment.

I

FACTS

A. *The Search*

On September 30, 2014, officers from the Riverside County Sheriff's Department, the West County Narcotics Task Force, and the Moreno Valley Special Enforcement Team executed a narcotics search warrant at a home on Dracaea Avenue in Moreno Valley. At the raid, they detained David Rodriguez coming out of the residence, but found nobody else at home.

Cathy Eastridge was not found during the search. However, her driver's license indicated she lived at the residence, and a law enforcement database containing information on prior police contacts associated her name with the address. A sheriff's investigator obtained Eastridge's picture in compiling the application for the search warrant, and identified her in court.

Once inside, the officers searched the residence. In the north bedroom, on top of a dresser, they found a plastic baggie of a "crystal-like substance," an EBT card imprinted with the name "Cathy Eastridge," and a plastic container containing feminine hygiene products. Later testing of the crystal-like substance revealed it to contain methamphetamine and weigh 6.870 grams without packaging. They found no drug paraphernalia used for smoking methamphetamine. Inside the dresser, they found two digital scales, about $400 in small bills inside a black purse, and some packing material typically used to pack drugs for sale. In a nightstand, they found a small box containing a

semiautomatic .380-caliber handgun, a loaded magazine, and three boxes of ammunition—about 120 rounds total. The law enforcement team also observed the house had a surveillance camera outside and a monitor for the camera inside the north bedroom. Based on the items in the bedroom, the sheriff's investigator said he believed the narcotics were for sale, not for personal use.

Rodriguez said he lived in the residence, but not in the bedroom where the drugs and other items were found. Law enforcement found a bullet-proof vest in his bedroom. Because he had prior felony convictions for domestic violence and assault with a deadly weapon, law enforcement arrested him on the charge of being a felon in possession of the vest.

At trial, the prosecutor presented supporting testimony of officers involved in obtaining the warrant and conducting the search. The facts recounted above come from their testimony. Eastridge elected not to put on affirmative evidence.

B. *The Prior Conviction for Possessing Methamphetamine for Sale*

On May 10, 2003, police stopped Eastridge for having an expired registration. While detained, she admitted being on probation for a drug offense and appeared to the officer to be under the influence of alcohol or a narcotic. When the officer tried to detain her, she resisted. While struggling with the officer, she reached into her shirt, removed a black container, and slid it beneath the officer's patrol vehicle. After subduing Eastridge, the officer recovered the container and found it to contain a plastic baggie with approximately two grams of methamphetamine. During a search of Eastridge and her

vehicle, law enforcement found a pager, two glass methamphetamine pipes, a scale, and $64 in currency. The officer concluded Eastridge was in possession of methamphetamine for the purpose of selling it and placed her under arrest. She was convicted of the offense in 2004.

Before trial, the People sought permission to introduce evidence concerning Eastridge's conviction. They argued the facts surrounding the prior conviction were sufficiently similar to the facts of her new case to warrant introducing the evidence to show intent and knowledge. Such evidence, they argued, is permissible under Evidence Code section 1101, subdivision (b) (section 1101(b)), which allows "the admission of evidence that a person committed a crime . . . when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, [or] knowledge . . .) other than his or her disposition to commit such an act."

Eastridge's defense counsel objected to the evidence on the ground its probative value is substantially outweighed by the probability its introduction would create a substantial danger of undue prejudice. (Evid. Code, § 352.) Defense counsel suggested the parties could mitigate the prejudice by entering a stipulation about the conviction. "If your Honor wants to allow it, yes, we would request under 352 it be limited solely for the purpose to say she was arrested and convicted of that crime. We'd ask it be sanitized as [much as] possible because it is—the facts and circumstances of that case are far different." Defense counsel said, "We're willing to stipulate that she has been convicted of a sales charge in the past and it was a felony. We believe that would be sufficient both

for 1101, she's been convicted of it can be easily argued since she's been convicted of it, she knows what meth is and what it looks like and everything of that nature."

The trial court ruled the prior conviction was relevant to Eastridge's intent and knowledge under section 1101(b) and not unduly prejudicial under Evidence Code section 352. The court found "the 1101(b) evidence was probative of intent and knowledge as relates to the defendant's intent and knowledge on the day in question. So any prejudicial impact, I believe, is outweighed by the probative value of that evidence. And I do find that it is admissible."

Instead of presenting evidence concerning the facts of the case, however, the parties agreed to enter a simple stipulation about the conviction. They stipulated to the jury, "Cathy Denise Eastridge has been previously convicted for a violation of Health and Safety Code 11378, a felony, in that she did willfully and unlawfully possess for sale a controlled substance, to wit, methamphetamine[,] on November the 8th, 2004."

After the conclusion of evidence, the trial court instructed the jury to consider the prior conviction only "for the limited purpose of deciding whether, one, the defendant acted with intent to sell a controlled substance in this case, or two, the defendant knew of the nature of the controlled substance when she allegedly acted in this case."

C. *The Verdict*

A jury convicted Eastridge of possessing methamphetamine for sale (Health & Saf. Code, § 11378), being a felon in possession of a firearm (Pen. Code, § 29800), and

being a felon in possession of ammunition (Pen. Code, § 30305, subd. (a)). On June 9, 2017, the trial court sentenced appellant to three years and four months in state prison.

II

ANALYSIS

A. *Admission of Prior Conviction*

Eastridge argues the trial court erred when it admitted the fact of her 2004 conviction for possessing methamphetamine for sale through a stipulation of the parties. She says the prior conviction was not admissible to prove knowledge or intent and the potential for prejudice far exceeded any probative value.

To prove Eastridge possessed methamphetamine for sale, the prosecution was required to present evidence that, among other things, she "possessed a controlled substance," she "knew of the substance's nature as a controlled substance," and she "intended to sell it." (*People v. Montero* (2007) 155 Cal.App.4th 1170, 1175, quoting CALCRIM No. 2302.) Since these are elements of the offense, the prosecution was required to come forward with evidence, even though Eastridge chose not to contest those elements, but to argue someone else had put the narcotics in her room without her knowledge, an attack on the possession element only. (*Estelle v. McGuire* (1991) 502 U.S. 62, 69 [holding, under California law, "the prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense"].)

People v. Holt (1984) 37 Cal.3d 436 (*Holt*) is not to the contrary. In *Holt*, the prosecutor asked defendant whether he had committed numerous past burglaries with the person alleged to be his accomplice in the murder/robbery offenses on trial. The trial court allowed the evidence of other crimes because the testimony established a prior relationship with the accomplice. Holt then admitted having committed four or five burglaries with the accomplice. The Supreme Court held it was improper to admit the evidence of other crimes to prove a prior relationship because the "relationship between [the accomplice] and Holt was never in issue. There was no dispute concerning the fact that they knew each other or that they were together on the night of [the] death." (*Id.* at p. 451.)

The difference between *Holt* and this case is clear. In *Holt*, the People did not need evidence about the prior offenses to prove the defendant and accomplice had a prior relationship. The prior relationship was never in question, nor was the fact they were together on the night of the offense being tried. Here, the prosecution was required to prove Eastridge knew the crystal-like substance was methamphetamine and she intended to sell the substance. Though there was other evidence of her intent to sell—the scales, cash, quantity of narcotics, and packaging materials—the People still had to prove she knew the nature of the substance. The prior conviction for possession of methamphetamine provided the only direct evidence of that required element. The holding of *Holt* is therefore neither binding nor instructive.

Eastridge also argues the circumstances of the prior conviction were too dissimilar to warrant introducing the prior conviction. But the cases were similar in their critical particulars. In both, there was evidence Eastridge had possession of methamphetamine and she had the narcotic in order to sell it. Eastridge complains of several dissimilarities. For example, she points out she was using methamphetamine and resisted arrest during the first case, whereas in the second case, she was not present when the authorities found the contraband, was not found to be under the influence, and did not resist arrest. Those differences do not overwhelm the important similarities of the two cases. Our conclusion may have been different if the trial court had permitted the evidence of the facts surrounding the prior offense, but the parties themselves proposed and entered a stipulation that limited the information the jury heard to the fact she had been previously convicted for possessing methamphetamine for sale.

Eastridge argues "[o]nce the agreement was made to stipulate to the conviction, and the facts underlying the conviction were not to be presented, the prior act lost all relevancy to prove a material fact." We disagree. To be convicted of possession with intent to sell in the prior case, it had to be true Eastridge knew the nature of methamphetamine as a controlled substance and had the specific intent to sell it. Thus, the stipulation presented some evidence of her knowledge and intent in committing the offense the second time. It's true she tried to prove she didn't know the narcotics were present in her room, which, had the jury believed it, would have rendered irrelevant her knowledge and intent in the prior case. But the jury evidently *did not accept* Eastridge's

story. As a result, they were left to decide whether she had knowledge of the nature of the substance and whether she had the intent to sell it before coming to their verdict. In short, the jury's rejection of Eastridge's factual defense made her intent and knowledge material and therefore rendered her prior conviction relevant.

We also reject Eastridge's argument the agreed stipulation was unduly prejudicial. As her attorney pointed out at trial, removing the facts surrounding her prior arrest mitigated any prejudice. "[W]e would request under 352 it be limited solely for the purpose to say she was arrested and convicted of that crime. We'd ask it be sanitized as [much as] possible because it is—the facts and circumstances of that case are far different." Not only did the stipulation remove potentially damaging details of the prior case—like her resisting arrest—it also specified Eastridge was convicted in the prior case, so introducing it did not pose "the danger that the jury might have been inclined to punish defendant for the uncharged offenses, regardless whether [they] considered [her] guilty of the charged offenses." (Evid. Code, § 352.)

Moreover, the trial court instructed the jury to consider the prior conviction only "for the limited purpose of deciding whether, one, the defendant acted with intent to sell a controlled substance in this case, or two, the defendant knew of the nature of the controlled substance when she allegedly acted in this case." We presume the jury understood and followed the trial court's instruction. (*People v. Gonzalez* (2018) 5 Cal.5th 186, 201.)

We conclude, under these circumstances, the trial court did not abuse its discretion by admitting the stipulation.

B. *Prosecutorial Misconduct*

Eastridge argues the People committed several instances of prosecutorial misconduct which individually and collectively caused prejudice.

1. *Prosecutor's misrepresentations of the evidence*

Eastridge complains first of the prosecution's statement that there was "[n]o evidence that David has a history of drug possession, drug sales, drug use. None whatsoever," meant to counter her position that David Rodriguez was the one who possessed the narcotics. She also complains the prosecutor repeatedly called her a "drug dealer" in closing arguments. She contends both statements were misleading and not based on the trial evidence.

With respect to David, she points to the search warrant, which said a confidential informant "advised your affiant that he/she is aware of a white female named 'Cathy' and a Hispanic male named 'David' who sell methamphetamine from their residence at [address] in the city of Moreno Valley." She said the warrant shows there *was* evidence David possessed and sold methamphetamines. With respect to herself, she points out the only evidence at trial regarding her past conduct was the stipulation she had a prior conviction for possession with intent to sell methamphetamine. That conviction, she argues, differs from a conviction for actual sales, so the prosecution's argument on that point was improper as well.

"A prosecutor's conduct violates the federal Constitution when it infects the trial with such unfairness as to make the resulting conviction a denial of due process. Conduct by a prosecutor that does not rise to this level nevertheless violates California law if it involves the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury." (*People v. Whalen* (2013) 56 Cal.4th 1, 52, disapproved on another ground by *People v. Romero and Self* (2015) 62 Cal.4th 1.) Due process bars a prosecutor from knowingly presenting false or misleading arguments. (*People v. Morrison* (2004) 34 Cal.4th 698, 717.) However, "prosecutors 'have wide latitude to discuss and draw inferences from the evidence at trial,'" and whether the inferences are reasonable is for the jury to decide. (*People v. Cole* (2004) 33 Cal.4th 1158, 1203.)

Here, the prosecutor did not knowingly present a false or misleading argument. David Rodriguez had no prior convictions for drug-related offenses. The jury heard his prior convictions were for domestic violence and assault with a deadly weapon. Further, there was no evidence linking Rodriguez to the narcotics and equipment found in Eastridge's room. On the contrary, the evidence indicated Rodriguez occupied the south bedroom and the only contraband found there was a bullet-proof vest. Though he was arrested, it was for possessing the bullet-proof vest as a convicted felon; it wasn't in connection with the methamphetamine. We conclude the prosecutor drew reasonable inferences from the evidence at trial. (*People v. Cole*, *supra*, 33 Cal.4th at p. 1203.) Though it is true the warrant contained a statement by a confidential informant accusing Rodriguez and Eastridge of selling drugs from their apartment, that statement was not

evidence at trial. On the contrary, it was a statement accepted as establishing probable cause for the search. What the search turned up was evidence of Eastridge's involvement with the methamphetamine trade, not Rodriguez's involvement.

We reach the same conclusion about the prosecutor's characterization of Eastridge as an experienced drug dealer. The jury heard the stipulation that Eastridge had previously been convicted of felony possession of methamphetamine for sale. That information alone provided the prosecution with a basis for alleging she was an experienced drug dealer and even that she had sold drugs in the past. Eastridge points out there is a distinction between the offenses of possessing narcotics for sale and actually selling narcotics. She contends the prosecution could not properly claim she had sold drugs, only that she had possessed them with the intent to sell. For our purposes, this is a distinction without a difference. The question is whether the prosecution was making reasonable inferences from the evidence. Here the prosecutor suggested the jury could infer Eastridge had sold drugs from the fact she had been convicted of possessing drugs with the intent to sell them. The inference is reasonable, and therefore his statement was not prosecutorial misconduct.

Further, the stipulation was not the only evidence she was an experienced drug dealer. The jury also saw and heard at trial that law enforcement found evidence of a drug selling business in Eastridge's bedroom. They found methamphetamine, packaging material, scales, and cash in small denominations. They also found a security camera wired into a monitor in her bedroom. The prosecutor could reasonably have inferred, and

asked the jury to infer, she had been selling methamphetamine from her residence. We therefore conclude the prosecutor's comments were not misconduct.

2. *Prosecutor's statement of the burden of proof*

Eastridge argues the prosecutor shifted the burden of proof by arguing the defense was "not able to make even a slightly reasonable argument as to why his defendant is not guilty."

A prosecutor "commit[s] misconduct insofar as her statements could reasonably be interpreted as suggesting to the jury [the prosecutor] did not have the burden of proving every element of the crimes charged beyond a reasonable doubt." (*People v. Hill* (1998) 17 Cal.4th 800, 831, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) "When attacking the prosecutor's remarks to the jury, the defendant must show that, '[i]n the context of the whole argument and the instructions' [citation], there was 'a reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner. [Citations.] In conducting this inquiry, we "do not lightly infer" that the jury drew the most damaging rather than the least damaging meaning from the prosecutor's statements.'" (*People v. Centeno* (2014) 60 Cal.4th 659, 667.)

Putting the offending statement in its context—as we are required to do—makes clear the prosecutor was not arguing Eastridge had to prove her innocence, but only that her interpretation of the evidence was unreasonable. The prosecutor said, "[Defense counsel] said a couple times David had the motive, the wife beater in the house had the

motive to sell drugs, to keep cash, guns, scales, ammo. But he didn't tell you what the motive was. He's trying to get you guys to speculate or guess, well, maybe there was a motive. Well, please provide us with a motive. But he didn't say because there isn't one. His arguments are unreasonable. They don't make sense. They're not complete. So he's not able to make even a slightly reasonable argument as to why his defendant is not guilty." These were permissible comments on the state of the evidence to counter a factual defense Eastridge had posited. The prosecutor did not commit misconduct by asserting the evidence didn't support the defense. (*People v. Romero* (2008) 44 Cal.4th 386, 416 [approving prosecutor's argument that the jury must "'decide what is reasonable to believe versus unreasonable to believe' and to 'accept the reasonable and reject the unreasonable'"].)

Nothing about the prosecutor's comments would mislead a reasonable jury to believe Eastridge was required to prove her defense, even if the prosecution's affirmative evidence failed on some element of the offense. The prosecutor's argument was entirely consistent with the trial court's instruction the jury must find Eastridge committed the offense beyond a reasonable doubt. There was no misconduct.

3. *Law enforcement opinion testimony*

Eastridge argued the prosecutor called on law enforcement to express improper opinion testimony about an ultimate issue by asking a detective whether he believed defendant possessed the methamphetamine for sale.

"[I]t is settled that an officer with experience in the narcotics field may give his opinion that the narcotics are held for purposes of sale based upon matters such as quantity, packaging, and the normal use of an individual." (*People v. Hunt* (1971) 4 Cal.3d 231, 237 (*Hunt*).) Eastridge provides no reason to depart from this long-standing precedent, even if we were permitted to do so. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 ["all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction"].)

Eastridge objects the prosecutor improperly elicited the officer's opinion that it was *Eastridge* who possessed the methamphetamine for sale by asking whether he believed the drugs found in *her* bedroom were possessed for the purpose of sale. That characterization is inaccurate. The prosecutor did ask, "And do you have an opinion as to whether the methamphetamine found in the *defendant's* bedroom was possessed for the purpose of sales?" (Italics added.) However, Eastridge's counsel objected the question mischaracterized the evidence, and the trial court sustained the objection. The prosecutor then corrected his question. "And in your opinion based on your training and experience, what was the controlled substance found in there possessed for?" The police officer responded, "In my opinion it was[,] based on all of the items located, and taking, again, the whole scenario in its totality, I believe they were possessed for sales." That question and response were consistent with *Hunt*. We therefore find no prosecutorial misconduct.[1]

[1] Because we find no instances of prosecutorial misconduct, we need not evaluate whether the conduct prejudiced Eastridge, either individually or cumulatively.

C. *Disclosure of Confidential Informant Information*

Eastridge asks us to review the trial court's decision not to disclose the identity of the confidential informant whose affidavit provided a basis for issuing the warrant used to gain entrance to Eastridge's residence. The People do not oppose the request and agree we should review the sealed portions of the search warrant.

"[A]ll or any part of a search warrant affidavit may be sealed if necessary to implement the [informant] privilege and protect the identity of a confidential informant. [Evidence Code] [s]ection 915, subdivision (b), expressly authorizes lower courts to utilize an in camera review and discovery procedure to effectuate implementation of the privilege." (*People v. Hobbs* (1994) 7 Cal.4th 948, 952; see also Evid. Code, §§ 1041, 1042, subd. (b).)

"On a properly noticed motion by the defense seeking to quash or traverse the search warrant, the lower court should conduct an in camera hearing pursuant to the guidelines set forth in section 915, subdivision (b). . . . It must first be determined whether sufficient grounds exist for maintaining the confidentiality of the informant's identity. It should then be determined whether the entirety of the affidavit or any major portion thereof is properly sealed, i.e., whether the extent of the sealing is necessary to avoid revealing the informant's identity." (*People v. Hobbs*, *supra*, 7 Cal.4th at p. 972.)

We are satisfied the trial court acted within its discretion in conducting its in camera review of the sealed materials, affirming the determination that sealing a portion of the affidavit was necessary to implement the People's assertion of the informant's

privilege. We agree with the trial court that information in the confidential portion, if disclosed, would tend to reveal the identity of the informant. There is nothing in the sealed or public portions of the record to suggest any misrepresentations, material or otherwise, were made by the affiant in applying for the search warrant, and, under the totality of the circumstances, there was probable cause to issue the search warrant. We therefore conclude the trial court properly denied Eastridge's motion.

III

DISPOSITION

We affirm the judgment.

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SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

MENETREZ
J.